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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Preemption of State and Local )  
Land Use Restrictions on the )  
Siting, Placement and Construction )  
of Broadcast Station Transmission )  
Facilities )

MM Docket No. 97-182

To: The Commission

COMMENTS OF COMMUNICATIONS FACILITIES, INC.

Communications Facilities, Inc. (CFI), a communications tower site management company, by counsel and pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. §1.415) hereby respectfully submits its comments in response to the *Notice of Proposed Rule Making* (the Notice), FCC 97-296, released August 19, 1997 in the captioned proceeding. The Notice considers whether, and to what extent, State and local land use regulations which affect the installation and maintenance of radio and television broadcast antenna facilities should be preempted. For its comments, CFI states as follows:

1. CFI is the owner and manager of a number of commercial tower sites in southwestern Virginia. Its experiences with municipal land use authorities relative to maintenance of broadcast and broadcast auxiliary tower facilities makes it readily apparent that the Commission must act quickly to preempt certain State and municipal land use regulations, in order to permit the continued operation of existing communications facilities. Consistent with the Commission's obligation to assure a rapid, efficient Nation-wide and world-wide radio communication service

with adequate facilities. 47 U.S.C. §151; and to encourage the provision of new technologies and service to the public. 47 U.S.C. §157, the Commission cannot tolerate the exclusionary zoning and other land use policies of certain municipalities. A recent experience of CFI, which is unfortunately becoming typical, is illustrative of the problem.

2. CFI owns and maintains a tower atop Price Mountain in Montgomery County, Virginia, overlooking suburban Blacksburg, Virginia. The tower has been in place since 1976. On that tower are mounted antennas for FM Broadcast translators, FM Broadcast Studio-to-transmitter links, CMRS facilities including paging transmitters, and the like. It is indispensable to the broadcast and CMRS facilities in the area, given the mountainous terrain. The area has in the past been zoned for agricultural uses, which included antennas at the height of the current tower, 180 feet. The tower is atop a ridgeline, which is unpopular with nearby residents as an aesthetic matter.

3. The tower is in serious need of replacement due to age, and because it will not accommodate any more antennas as a structural matter. Yet, because of a rezoning decision on the part of the County (which had as one of its purposes the elimination of antennas for aesthetic reasons) the land atop the mountain has been rezoned for residential purposes, with a 35-foot fixed height limitation. This would not, on its face, accommodate the present antenna if it were to be built today, of course. Non-conforming uses are grandfathered under this zoning ordinance, but the way it is configured, if the tower were to be replaced, a replacement tower could not be installed, *save for one of half of the value of the current antenna*. Therefore, a replacement tower could not be installed at more than one-half of the height of the present tower. The broadcast and CMRS uses of the antenna would be reduced by half, even though the replacement

tower would be installed for safety-based purposes.

4. The Commission should not concern itself with structural safety issues involving communications antennas. However, where an ordinance would require the elimination of half of the existing communications antenna facilities at a unique antenna site at the time the tower is replaced for reasons directly related to safety, and where that requirement is intended to discourage the installation of antennas purely for aesthetic reasons, the Commission should determine that the ordinance stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Here, the ordinance not only acts as an entry barrier for new CMRS facilities [See Section 704 of the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (1996)] but also would render broadcast and broadcast auxiliary coverage impossible. Worse, it is a clear deterrent to the maintenance of safe antenna facilities, because it deters safety-based antenna replacement.

5. It is instances such as these, and not just new antenna installation regulations, that must be clearly preempted by the Commission. Due to the cost of litigation over facilities siting, the delay caused thereby, and the essentially unlimited municipal jurisdiction currently over broadcast antenna facilities (and broadcast auxiliary communications facilities) the Commission must enact a comprehensive facilities siting policy for broadcast, and for multiple use communications sites which incorporate broadcast facilities. Grandfathered antenna systems and communications towers must be allowed to be replaced for structural safety purposes, and to accommodate new technology services such as CMRS facilities. The preemption policies promoted by the National Association of Broadcasters and the Association of Maximum Service Television should be adopted, but applied to all broadcast and broadcast auxiliary facilities

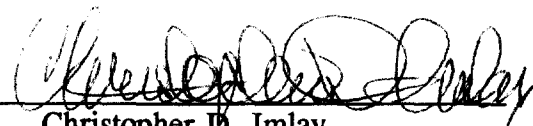
without distinction.

Therefore, the foregoing considered, Communications Facilities, Inc. respectfully requests that the Commission resolve the instant proceeding by adoption of a comprehensive land use preemption policy which will guarantee the ability of existing communications service providers and broadcasters to maintain safe and effective antenna facilities, as well as the ability to install new facilities without unreasonable municipal regulation.

Respectfully submitted,

**COMMUNICATIONS FACILITIES, INC.**

By



Christopher D. Imlay  
Its Attorney

**BOOTH, FRERET, IMLAY & TEPPER, P.C.**  
5101 Wisconsin Avenue, N.W.  
Suite 307  
Washington, D. C. 20016

(202) 686-9600

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